

Plan in a timely manner, as well as interest, liquidated damages and attorneys' fees, all as provided for under ERISA.

PARTIES

1. Plaintiff Plan is located at 53 Goffstown Road, Manchester, New Hampshire 03108, and, at all times material, has been administered as a multi-employer profit sharing plan that permits employee elective deferrals and employer matching contributions, in accordance with section 401(k) of the Code, for the benefit of certain employees of First Student. Plaintiff Trustee Padellaro is a Trustee of the Plan and, in that capacity, also serves as the Chairman of the Board of Trustees of the Plan.

2. Defendant First Student, with headquarters located at 600 Vine Street, Suite 1400, Cincinnati 04502, is a national provider of student transportation.

JURISDICTION AND VENUE

3. This Court has jurisdiction over this matter pursuant to 29 U.S.C §1132(e)(1).

4. Venue is proper in this District pursuant to 29 U.S.C §1132(e)(2).

FACTUAL ALLEGATIONS

5. Pursuant to collective bargaining agreements between First Student and several New England-based Teamsters Union Locals, First Student became and continues to be a contributing employer to the Plan. Under the terms of those collective bargaining agreements, First Student was/is obligated to pay to the Plan employer contributions matching, by certain percentages and up to certain annual maximums, elective contribution deferrals made by employees of First Student.

6. By June 2016, the Plan and First Student were aware that First Student had failed to pay to the Plan matching contributions it owed for many employees. On June 22, 2016, First Student

signed an Agreement Concerning Annuity and 401(k) Contributions. Under the Agreement, First Student agreed to make its matching contributions on a quarterly basis by the end of the calendar month following the end of calendar quarters and agreed further that the employer match associated with Q2 2016 would include all employer matching contributions that had accrued but had been unpaid through June 30, 2016.

7. On July 7, 2016, First Student reported to the Plan the results of First Student's self-audit of the employer matching contributions it failed to pay through June 30, 2015. According to its own audit, First Student, through June 30, 2015, had failed to make required matching contributions, totaling \$27,961.84, on behalf of one hundred and ten (110) covered employees.

8. Also as part of its self-audit, First Student determined that it had misdirected \$34,535.28 in employee elective deferrals into a First Student-sponsored plan rather than to the Plan.

9. Despite repeated requests from the Plan, First Student has failed and refused (1) to make the employer matching contributions it owed through June 30, 2015; (2) to make the employer matching contributions it owed for the period July 1, 2015 through June 30, 2016; and (3) to reimburse the Plan for the elective deferrals erroneously diverted to the company-sponsored plan.

CLAIMS FOR DELINQUENT CONTRIBUTIONS UNDER ERISA SECTIONS 502(A)(3) AND 515

CLAIM ONE

10. Plaintiffs Plan and Trustee Padellaro incorporate by reference herein and re-allege the allegations of paragraphs 1 through 9, inclusive.

11. In accordance with the terms of its collective bargaining agreements with the New England-based Teamsters Union Locals, First Student was required to make and currently owes the Plan \$27,961.84 in unpaid matching employer contributions that accrued through June 30,

2015 as well as at least \$49,904.33 in employer matching contributions due and owing for the period July 1, 2015 through June 30, 2016. First Student, in failing to make contributions required by the terms of the collective bargaining agreements, has violated Section 515 of ERISA.

PRAYER FOR RELIEF

Plaintiffs Plan and Trustee Padellaro request that the Court enter judgment against First Student in the amount of \$77,866.17; that the Court also award the Plan interest on the unpaid contributions equal to the greater of 5% of the delinquent contributions or the average percentage return on the 401(k) accounts of the First Student employees; liquidated damages equal to the amount of interest owed; and the Plan's attorneys' fees and costs, all as provided for and required by Section 502(g)(2) of ERISA. Plaintiffs further request that the Court enter an injunction requiring First Student to make future contributions to the Plan in a timely manner; and that the Court enter whatever further relief it deems right and just.

CLAIM TWO

12. Plaintiffs Plan and Trustee Padellaro incorporate by reference herein and re-allege the allegations of paragraphs 1 through 11, inclusive.

13. In accordance with the terms of its collective bargaining agreements with the New England-based Teamsters Union Locals, First Student was required to send the elective deferrals of all employees covered by those agreements to the Plan but it failed to do so.

PRAYER FOR RELIEF

Plaintiffs Plan and Trustee Padellaro request that the Court enter judgment against First Student in the amount of \$34,535.28; that the Court also award the Plan interest on the unpaid contributions equal to the greater of 5% of the delinquent elective deferrals or the average

percentage return on the 401(k) accounts of the First Student employees; liquidated damages equal to the amount of interest owed; and the Plan's attorneys' fees and costs, all as provided for and required by Section 502(g)(2) of ERISA. Plaintiffs further request that the Court enter an injunction requiring First Student to send exclusively to the Plan the elective deferrals made by First Student employees who are covered by its collective bargaining agreements with the New England-based Teamsters Union Locals; and that the Court enter whatever further relief it deems right and just.

Respectfully submitted,

**NEW ENGLAND TEAMSTERS SAVINGS AND
INVESTMENT PLAN and JEFFREY PADELLARO**

By their Attorneys,

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